IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 34 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISABKHAN SALEMANKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

Mr.K.C.Shah, A.P.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/09/2000

ORAL JUDGEMENT

1. List has been revised thrice. None appeared for the revisionist. As such impugned order has been examined and Shri K.C.Shah, learned A.P.P. has been

heard.

2. The revision is directed against the order dated 8.1.1999 by learned Judicial Magistrate First Class, Palitana, rejecting the request of the revisionist for permission to file zerox copy of Deed of Partition. This request was made in the course of cross examination of the respondent No.2 in proceedings u/s. 125 Cr.P.C. In the impugned order the learned Magistrate has recorded reasons that since the original Partition Deed was not produced nor it was summoned either from the respondent No.2 or from one Ibrahim, in whose custody it is suspected to be there, and as such zerox copy in the nature of secondary evidence in the absence of proof of loss of original cannot be accepted.

3. It is clear from the impugned order that it is purely interlocutory order which is hardly revisable in view of Section 397(2) Cr.P.C. The revision was, however, admitted for hearing on 25.2.1999. The revision has to be dismissed on three grounds. Firstly, none is present to press this revision, secondly the revision is directed against the interlocutory order hence it is not maintainable and thirdly there is no illegality in the impugned order because loss of original Partition Deed was not established nor any attempt was made to inquire during course examination from Havabai, respondent No.2, as to in whose possession the said Deed of Partition is. Likewise no request was made to the learned Magistrate to summon the said Partition Deed from Ibrahim who is suspected to be in possession and custody of the same. Consequently loss of original Partition Deed was not satisfactorily established hence secondary evidence in the nature of zerox copy of said partition deed could not be admitted in evidence by the learned Magistrate. He, therefore, committed no illegality in rejecting the request of the revisionist especially the request contained in Application Ex.13.

As such the revision is devoid of merit, which is hereby dismissed.

sd/-

Date : September 14, 2000 (D. C. Srivastava, J.)

sas